

**NOT FOR PUBLICATION**

**FILED**

UNITED STATES COURT OF APPEALS

**OCT 24 2005**

FOR THE NINTH CIRCUIT

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

JEFFREY H. BECK, Liquidating Trustee  
of the Estates of Crown Vantage, Inc. and  
Crown Paper Company,

Appellant,

v.

PACE INTERNATIONAL UNION, on  
behalf of member and former member  
participants in pension plans sponsored by  
the Debtors; EDWARD MILLER;  
JEFFREY D. MACEK, on behalf of  
themselves and others similarly situated,

Defendants - Appellees.

No. 03-15303

D.C. Nos. CV-02-01407-MHP

MEMORANDUM<sup>\*</sup>

PACE INTERNATIONAL UNION, AFL-  
CIO, CHEMICAL & ENERGY  
WORKERS INTERNATIONAL UNION,  
on behalf of members and former member  
participants in pension plans,

Defendant - Appellant,

v.

No. 03-15331

D.C. Nos. CV-02-01407-MHP

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<sup>\*</sup> This disposition is not appropriate for publication and may not be  
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

JEFFREY H. BECK, Liquidating Trustee  
of the Estates of Crown Vantage, Inc. and  
Crown Paper Company,

Appellee.

Appeal from the United States District Court  
for the Northern District of California  
Marilyn H. Patel, District Judge, Presiding

Argued and Submitted November 4, 2004  
San Francisco, California

Before: REINHARDT, PAEZ, and BERZON, Circuit Judges.

In an opinion published today, we hold that the bankruptcy court did not err in concluding that the Crown board breached its fiduciary duties under the Employee Retirement Income Security Act of 1974 (ERISA), as amended, 29 U.S.C. §§ 1001-1461, affirm the district court's ruling on this issue, and remand the issue of PACE's standing. Crown challenges the remedy imposed by the bankruptcy court. We have jurisdiction pursuant to 28 U.S.C. § 158(d), and we affirm.

Bankruptcy courts have broad authority to order appropriate equitable relief. *See, e.g., Johnson v. Home State Bank*, 501 U.S. 78, 88 (1991) (“[T]he bankruptcy court retains its broad equitable power to issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Code].”) (internal

quotation marks and citation omitted, second alteration in original). Moreover, ERISA § 502(a)(3) specifically recognizes that plan participants, beneficiaries or fiduciaries may obtain injunctive or “other appropriate equitable relief” to redress ERISA violations or to enforce ERISA provisions. 29 U.S.C. § 1132(a)(3). ERISA § 409 contains a “catchall” relief provision subjecting a fiduciary to personal liability for “such other equitable or remedial relief as the court may deem appropriate.” 29 U.S.C. § 1109(a); *Amalgamated Clothing & Textile Workers Union v. Murdock*, 861 F.2d 1406, 1414 (9th Cir. 1988) (“When a fiduciary has breached one of his statutorily defined duties to an ERISA plan, then the catchall relief provision of § 409(a) may be used to fashion a remedy that inures to the benefit of the plan as a whole.”) (internal quotation marks and citation omitted). We review the bankruptcy court’s choice of remedies for an abuse of discretion. *Bankr. Receivables Mgmt. v. Lopez, (In re Lopez)*, 345 F.3d 701, 705 (9th Cir. 2003), *cert. denied*, 541 U.S. 987 (2004).

Following the bankruptcy court’s determination that Crown breached its fiduciary duties to plan participants and beneficiaries, the court issued a preliminary injunction ordering that Crown maintain the residual assets of the plan in an interest-bearing account pending a final decision on the allocation of the assets. Pursuant to the bankruptcy court’s order, the parties submitted a joint

report setting forth a procedure for distribution of the residual assets for the benefit of the plan participants. The bankruptcy court entered an order approving the distribution plan and left the preliminary injunction in effect pending implementation of the distribution.

Crown argues that by approving the distribution plan, the bankruptcy court improperly imposed a constructive trust over the residual assets of the plan. By the terms of its order, the bankruptcy court did not characterize the remedy it imposed as a constructive trust. Rather, having found a breach of fiduciary duties under ERISA, the bankruptcy court exercised its broad equitable power and approved a distribution of plan assets as set forth by the parties. Under all of the circumstances, we fail to see how the bankruptcy court abused its discretion in awarding this relief.

**AFFIRMED.**